



**FEDERAL ELECTION COMMISSION**  
**WASHINGTON D C 20463**

**VIA FAX AND CERTIFIED FIRST CLASS MAIL**

**Helen-Mary B McGovern**  
**Brand Law Group**  
**923 Fifteenth Street, N W**  
**Washington, D C 20005**

**AUG 1 6 2008**

**RE MUR 5726**  
**Jack Davis**

**Dear Ms McGovern**

**After considering all the available evidence, the Office of the General Counsel is prepared to recommend that the Federal Election Commission (the "Commission") find probable cause to believe that your client, Jack Davis, violated 2 U S C §§ 441a-1(b)(1)(C) and 441a-1(b)(1)(D), provisions of the Federal Election Campaign Act of 1971, as amended. Enclosed for your review is a brief stating the position of the General Counsel on the legal and factual issues of this matter.**

**You may file a brief stating your position on the issues and replying to the brief of the General Counsel. Your brief should be submitted to the Secretary of the Commission (ten copies if possible) within fifteen days of receipt of this notice. Three copies of your brief should also be forwarded to the Office of the General Counsel, if possible. The General Counsel's brief and any brief you submit will be considered by the Commission before proceeding to a vote of whether there is probable cause to believe a violation has occurred.**

**If you are unable to file a responsive brief within fifteen days, you may submit a written request for an extension of time. All requests for extensions of time must be submitted in writing at least five days prior to the due date, and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not grant extensions greater than twenty days.**


**The Commission may or may not approve the General Counsel's probable cause recommendation. If the Commission finds probable cause to believe a violation has occurred, the Office of the General Counsel will contact you and attempt, for a period of not less than thirty days, but not more than ninety days, to settle this matter through conciliation.**

28044204210

Helen-Mary B McGovern  
MUR 5726  
Page 2

Should you have any questions, please contact Zachary Mahshie, the attorney assigned to this matter, at (202) 694-1650

Sincerely,



Lawrence H Norton  
General Counsel

Enclosure  
Brief

28044204211

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2 In the Matter of )

3 )  
4 Jack Davis ) MUR 5726  
5 )  
6 )  
7 )

8 **GENERAL COUNSEL'S BRIEF**

9 **I. INTRODUCTION**

10 On April 4, 2006, the Federal Election Commission ("Commission") found reason to  
11 believe that Jack Davis violated several reporting requirements arising under the "millionaire's  
12 amendment" of the Bipartisan Campaign Finance Reform Act of 2002. Specifically, the  
13 Commission found that Mr. Davis violated 1) 2 U.S.C. § 441a-1(b)(1)(C) by failing to timely  
14 file an initial notification of expenditures of \$350,000 in personal funds, and 2) 2 U.S.C.  
15 § 441a-1(b)(1)(D) by failing to file and failing to timely file notifications of multiple  
16 expenditures of additional personal funds. Based on the following factual and legal analysis, this  
17 Office is prepared to recommend that the Commission find probable cause to believe that Jack  
18 Davis violated 2 U.S.C. § 441a-1(b)(1)(C) and 2 U.S.C. § 441a-1(b)(1)(D) by failing to file  
19 multiple notifications of expenditures of personal funds.

20 **II. FACTUAL SUMMARY**

21 Jack Davis declared his candidacy for New York's 26th District seat in the United States  
22 House of Representatives to the Federal Election Commission on March 18, 2004, by filing FEC  
23 Form 2, Statement of Candidacy. As part of the Form 2, Mr. Davis declared his intention to  
24 spend \$500,000 in personal funds for the general election. Mr. Davis ran unopposed in the  
25 Democratic primary, but he lost in the general election on November 2, 2004.

Mr Davis started spending personal funds on his campaign on March 18, 2004 with a \$10,000 direct contribution. On March 31, 2004, he made his only other direct contribution to his campaign, in the amount of \$7,280. Between March 31 and October 22, 2004, Mr Davis made loans to the Committee totaling \$1,240,000, which increased his total personal expenditures to \$1,257,280. All contributions and loans from the candidate's personal funds were designated for the general election. The following chart outlines all disclosed contributions and loans made by Mr Davis to the Committee. As illustrated, Mr Davis exceeded \$350,000 in personal funds expended on his general election candidacy when he lent \$80,000 to his campaign on September 2, 2004.

Date	Amount	Type	Balance
March 18, 2004	\$10,000	Contribution	\$10,000
March 31, 2004	\$7,280	Contribution	\$17,280
March 31, 2004	\$100,000	Loan	\$117,280
May 11, 2004	\$50,000	Loan	\$167,280
June 7, 2004	\$40,000	Loan	\$207,280
August 6, 2004	\$60,000	Loan	\$267,280
August 11, 2004	\$80,000	Loan	\$347,280
September 2, 2004	\$80,000	Loan	\$427,280
September 15, 2004	\$80,000	Loan	\$507,280
September 22, 2004	\$80,000	Loan	\$587,280
October 22, 2004	\$80,000	Loan	\$667,280
November 16, 2004	\$80,000	Loan	\$747,280
December 23, 2004	\$80,000	Loan	\$827,280

Neither Mr Davis nor the Committee filed an initial notification or any additional notifications (FEC Form 10a) with the Commission or with Mr Davis's opponents and their national parties disclosing his expenditures from personal funds.

The Commission sent Requests For Additional Information to the Committee on October 21, November 16, and December 23, 2004, requesting explanations for the non-filed FEC Form

1 10s On December 20, 2004, the Commission received a letter from the Committee explaining  
2 that its failure to file any Form 10s was "a direct result of [its] inexperience in filing requirements  
3 for a congressional candidate" and that "there was no intent to conceal facts or to mislead the  
4 FEC " Miscellaneous Report to FEC, Jack Davis for Congress (December 20, 2004) The  
5 Committee provided no additional explanation in response to the Commission's Factual and  
6 Legal Analysis for its failure to file the required Form 10s

7 **III. LEGAL ANALYSIS**

8 When a candidate for the U S House of Representatives makes aggregate expenditures  
9 from personal funds of \$350,000 or more for an election, the candidate or his or her authorized  
10 committee shall file a notification of the expenditure (FEC Form 10) within 24 hours of  
11 exceeding the threshold <sup>1</sup> 2 U S C § 441a-1(b)(1)(C), 11 C F R § 400 21(b) For each  
12 additional expenditure of \$10,000 or more, the candidate is required to file an additional  
13 notification within 24 hours 2 U S C § 441a-1(b)(1)(D), 11 C F R § 400 22(b) These  
14 notifications must be filed with the Commission, each candidate in the same election, and the  
15 national party of each such candidate and must include, among other things, the date and amount  
16 of the expenditures and the total amount expended as of the date of the filing <sup>2</sup> 2 U S C  
17 §§ 441a-1(b)(1)(E) and (F), 11 C F R § 400 23 Although FEC Form 10 is signed by the  
18 committee treasurer, the candidate is responsible for ensuring that it is filed in a timely manner

---

<sup>1</sup> An expenditure from personal funds includes direct contributions, an expenditure made by a candidate using personal funds, loans made by a candidate using personal funds, or a loan secured using such funds to the candidate's authorized committee 2 U S C § 441a-1(b)(1)(A) There is a separate \$350,000 threshold for the primary and general elections 11 C F R § 400 2(b) However, as discussed above, Mr Davis designated all of his contributions and loans to the general election *Supra*, Section II, at 3

<sup>2</sup> A candidate's personal expenditures could entitle his opponents to a threefold increase in the contribution limit under 2 U S C § 441a(a)(1)(A) and a waiver of the limits on coordinated party expenditures under 2 U S C § 441a(d) See 2 U S C § 441a-1(a)(1), 11 C F R § 400 41

**See 11 C F R § 400 25, MUR 5623 (Mike Crotts for Congress) (finding candidate liable for committee's failure to file one Form 10), MUR 5488 (Brad Smith for Congress) (holding candidate liable for accepting excessive contributions due to committee's error in calculating eligibility for increased limits under the millionaire's amendment)**

**As noted, Mr Davis exceeded the \$350,000 threshold on September 2, 2004, which obligated the Committee and candidate to file an FEC Form 10, Notification of Expenditures from Personal Funds, within 24 hours of the threshold expenditure, or by September 3, 2004 2 U S C § 441a-1(b)(1)(C) However, the Committee completely failed to file a Form 10 with the Commission or send copies to his opponents and their national parties Therefore, this Office is prepared to recommend that the Commission find probable cause to believe that Jack Davis violated 2 U S C § 441a-1(b)(1)(C) In addition, the Committee failed to file additional FEC Form 10s regarding six additional loans in excess of \$10,000 made by Mr Davis to the Committee between September 17 and October 22, 2004 Therefore, this Office is prepared to recommend that the Commission find probable cause to believe that Jack Davis violated 2 U S C § 441a-1(b)(1)(D)**

**IV. RECOMMENDATIONS**

- 1 Find probable cause to believe that Jack Davis violated 2 U S C § 441a-1(b)(1)(C) and  
2 U S C § 441a-1(b)(1)(D)

Date

9/15/06

  
Lawrence H Norton  
General Counsel

  
Lawrence Calvert, Jr  
Deputy Associate General Counsel for Enforcement

  
Ann Marie Terzaken  
Assistant General Counsel

  
Zachary H Mahshie  
Attorney